IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1367 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANISH ALIAS MUKESH DINESHBHAI MAROO

Versus

POLICE COMMISSIONER

Appearance:

MR KR JANI for Petitioner

MR ND GOHIL, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2001

ORAL JUDGEMENT

#. Heard the learned advocate Mr.Kiran R.Jani on behalf of the petitioner and the learned AGP Mr.N.D.Gohil for the respondent - State.

#. In the present petition, the petitioner has challenged the order of detention dated 30.10.2000 passed by the Police Commissioner, Ahmedabad City under Article 226 of the Constitution of India. The petitioner has been detained in Surat Jail as Class-II detenu. In all, four offences were registered against the present petitioner under sections 379 and 114 of IPC. The last offence was registered on 5.7.2000. The respondent State has filed the affidavit-in-reply which has been taken on record.

#. The learned advocate Mr.Jani has challenged the detention order on the ground that the concerned Police Inspector, Kagdapith Police Station has recorded the statement of the secret witness on 23.10.2000 and the said statement has been verified by the Detaining Authority on 29.10.2000. Similarly, other statement was recorded on 25.10.2000 by the Police Inspector, Kagdapith Police Station and the same has been verified on 29.10.2000 by the Detaining Authority and thereafter immediately on the next day in a mechanical manner the detention order has been passed by the Detaining Authority against the present petitioner.

Mr.Jani has relied upon the decision of this Court reported in 2000(3) GLR, 2969 in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat.

The next contention which has been raised by the learned advocate Mr.Jani that the last offence which has been registered against the present petitioner on 2.7.2000 and the detention order has been passed after a period of three months on 30.10.2000, and therefore, delay of three months which fatal the detention order.

Mr.Jani has also raised the contention that the representation of the present petitioner dated 21.12.2000 on page 17 and the reply on page 19, have been considered by the Detaining Authority, but in fact the Detaining Authority has no power to consider except to forward the same to the State Government, and therefore, according to the learned advocate Mr.Jani the detention order is required to be quashed and set aside.

#. The learned AGP Mr.N.D.Gohil appearing on behalf of the respondent - State has submitted that the affidavit-in-reply has been filed by the Detaining Authority and there is no illegality committed by the Detaining Authority and thus the order of detention has been passed after recording subjective satisfaction and

with full application of mind.

#. I have considered the submissions of both the learned advocates and considering one contention that the statement which has been recorded by the Police Inspector has been verified by the Detaining Authority on 29.10.2000 and immediately on the next day in a mechanical manner on 30.10.2000 the Detaining Authority has passed the detention order. Therefore, I consider this one contention enough to vitiate the order of detention. The following relevant observations of this Court reported in 2000(3) GLR, 2696 are as under :-

"After referring to Kalidas C.Kahar Vs. State of Gujarat, 1993 (2) GLR 1659 the Court observed :

> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June 1999 and 26th June 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e., on 30th August 1999 the detention order has been passed.
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> The manner in which the verification has been recorded of the statements made by these three witnesses for the purpose of Sec. 9(2) shows that the same has been done only as an empty formality inasmuch as the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever the statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of

verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege under Sec. 9(2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power under Sec. 9(2) and it is established that in such cases, the wrong exercise of power under section 9(2) adversely affects the detenu's right of making an effective representation guaranteed under Article 22(5) of the Constitution of India.

Once the materials are placed before the detaining authority with the proposal by the sponsoring authority, it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege under section 9(2) of the Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the present case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August 1999, i.e., on the next day to the date on which the materials were considered by the detaining authority."

#. Therefore, considering the above observations of this Court, according to my opinion, when the statements recorded by the concerned Police Inspector on 23.10.2000 and 25.10.2000 of two witnesses and both the statements were verified by the Detaining Authority on 29.10.2000 and on the next day without application of mind in a mechanical manner the order of detention has been passed by the Detaining Authority and this aspect has not been verified or explained by the Detaining Authority in its reply that whether it has applied its mind and sufficient care has been taken to verify the statements made by the concerned witnesses, and therefore, in absence of such material, according to my opinion and considering the

observations of this Court the order of detention is vitiated and therefore, the same is required to be quashed and set aside.

#. In the result, the petition succeeds and the same is allowed. The order of detention dated 30.10.2000 is vitiated and resulted to quash and set aside. The detenu - Manishbhai @ Mukesh Dineshbhai Maroo (Vankar) who has been detained at Surat Jail be set as liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(H.K.Rathod,J)
(pathan)